

## **REMARKS**

Prior to this Amendment and Response, claims 1-7 and 11-16 were pending in the above-referenced application. In the Official Action, the Examiner rejected claims 1-7 and 11-16. In the present response, no claims have been cancelled, amended, or added. Accordingly, claims 1-7 and 11-16 remain pending in the application. Reconsideration of the rejections and allowance of the pending claims are respectfully requested in view of the remarks presented below.

### **Rejection Under 35 U.S.C. § 103**

Claims 1-7 and 11-16 were rejected under 35 U.S.C. § 103(a) as being rendered obvious by U.S. Pat. No. 5,608,426 to Hester (herein referred to as “the Hester patent”) in view of U.S. Pat. No. 6,664,969 to Emerson et al. (herein referred to as “the Emerson patent”). The Applicant respectfully asserts that this rejection is improper under 35 U.S.C. § 103(c) and M.P.E.P. § 706.02(l).

Under Section 103(c), a prior art reference that only qualifies as prior art under 35 U.S.C. § 102(e), (f) or (g) cannot be applied to reject an Applicants’ claims under Section 103 if, at the time the Applicants’ invention was made, the prior art patent and the instant invention are “owned by the same person or subject to an obligation of assignment to the same person.” *See* 35 U.S.C. § 103(c).

The Emerson patent was filed on November 12, 1999 and issued on December 16, 2003. Because the present application was filed on January 4, 2002, the Emerson patent and the present application are co-pending applications. Also, based on this information, the

Emerson patent is only applicable as prior art against the instant application under 35 U.S.C. § 102(e)/103.

Here, both the subject matter of the Emerson patent and the present application were, at the time the invention was made, owned by the same organization or subject to an obligation of assignment to the same organization. The Applicants' representative asserts that the instant invention was owned or subject to an assignment to Compaq Information Technologies Group, L.P. at the time the invention was made. In addition, the Applicants' representative asserts that, at the time the instant invention was made, the application that matured into the Emerson patent was owned or subject to an obligation of assignment to Compaq Computer Corporation, and was subsequently assigned to Compaq Information Technologies Group, L.P., on January 8, 2002. Both of the assignees are wholly owned by Compaq Computer Corporation, which under M.P.E.P 706.02(l)(2) means that they are "commonly owned." Accordingly, Applicants respectfully request withdrawal of the rejection of all claims under Section 103(a) based on Hester in view of Emerson.

**Conclusion**

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims 1-7 and 11-16. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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